

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY LYNN NORWOOD,

Plaintiff,

No. CIV S-03-2554 GEB GGH P

vs.

EDWARD ALAMEIDA, JR., et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Introduction

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is defendants' March 23, 2006, motion for summary judgment; plaintiff filed opposition<sup>1</sup> to the motion on May 12, 2006.<sup>2</sup> By Order, filed on September 21,

<sup>1</sup> Plaintiff's opposition has been put together in a wholly haphazard fashion. It consists of almost 700 pages, much of it wholly unnecessary and almost all of it hopelessly disorganized. For example, and to no apparent purpose, plaintiff includes defendants' motion for summary judgment as part of his opposition. He includes, inter alia, many duplicative pages of exhibits, an earlier motion to compel, a litany of defendants' discovery responses, without identifying in his opposition the basis for their submission. In his opposition to the defendants' undisputed facts, plaintiff does not identify or cite to the exhibits upon which he seeks to rely to counter defendants' evidence. Plaintiff has placed an undue burden on this court in making it so difficult to navigate his filing.

<sup>2</sup> Per the mailbox rule, the opposition was filed on May 9, 2006.

2006, the court, inter alia, granted plaintiff's motion pursuant to Fed. R. Civ. P. 56(f) only to the extent of allowing plaintiff to file a supplemental response within 30 days of service upon him of defendant Vance's supplemented response to a specific interrogatory, therein set forth, in plaintiff's first set of interrogatories propounded upon Vance. Defendants filed notice of having re-served the supplemented response on September 27, 2006. Plaintiff has not filed a supplement to his opposition and the time for doing so has long since expired. Even though the time for doing so had passed, on February 26, 2007, plaintiff expressly informing the court that he did not intend to file any supplemental opposition. Therefore, the court proceeds to adjudicate the defendants' dispositive motion.

#### Second Amended Complaint

This matter, originally filed on December 15, 2003, proceeds on the verified second amended complaint, filed on June 7, 2005, naming as defendants two former California State Prison-Sacramento (CSP-Sac) wardens Cheryl Pliler and Mike Knowles; two former CSP-Sac B-Facility captains, Steve J. Vance and David Willey; and three former associate wardens of CSP-Sac B-Facility: Michael F. Martel; Thomas P. Goughnour; and James P. Walker. Plaintiff alleges that during four lockdown periods, he was deprived of outdoor exercise causing him physical and psychological injury, including stress, anxiety, depression, headaches and muscle cramps. He and other inmates on lockdown were confined to a double-bunk cell 24 hours a day seven days a week with the exception of a five-minute shower period every other day, excluding Sundays. He alleges that the extended lockdown periods without permitting outdoor physical exercise constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Second Amended Complaint (SAC), pp. 2-4.

Black general population inmates were denied outdoor exercise for fourteen of the 22 months from January 4, 2002, until November 4, 2003, arising from no individual misconduct or propensity to escape. SAC, p. 4. The first period lockdown period at issue began on January 4, 2002, and concluded on April 3, 2002, and was instituted because of an alleged staff stabbing

1 purportedly by Mexican inmates in CSP-Sac dining hall two. Memoranda rescinding outdoor  
2 exercise were passed out to inmates and were signed by defendant CSP-Sac B-Facility Captain  
3 Vance, at which time plaintiff suffered anxiety, depression, stress, headaches and muscle cramps.  
4 Defendant Warden Plyler not only had to have approved the excessive deprivation of outdoor  
5 exercise but did nothing to intervene to prevent the suffering and deprivation caused over the  
6 thirteen-week period. SAC, p. 5, Exhibit (Ex.) A.<sup>3</sup>

7           The second lockdown period occurred from May 8, 2002, until July 31, 2002.  
8 This lockdown occurred because of an alleged staff stabbing assault involving a single black  
9 inmate who attacked his work supervisor. Defendants Vance and Assoc. Warden Goughnour  
10 signed memoranda rescinding outdoor physical exercise until July 31, 2002. Defendant Pliler, at  
11 a minimum, implicitly approved the extended (thirteen-week) period of exercise deprivation and  
12 failed to intervene to prevent plaintiff's suffering, causing the plaintiff to suffer and endure the  
13 conditions previously noted. SAC, p. 5, Ex. B.

14           The third period of outdoor exercise deprivation occurred during a lockdown  
15 which began on December 28, 2002, and ended on June 1, 2003. This lockdown was  
16 precipitated by a melee in the B-Facility's main yard wherein staff was allegedly stabbed.  
17 Defendant Vance and Assoc. Warden Martel signed various memoranda depriving plaintiff of  
18 outdoor physical exercise for a twenty-week period. Defendant Pliler, as warden, had to have  
19 approved the deprivation and, in any event, failed to intervene on plaintiff's behalf to stop his  
20 suffering from headaches, stress, anxiety, depression and muscle cramps, as a result of not being  
21 allowed outdoor exercise for an extended period. SAC, p. 6, Ex. C.

22           The fourth outdoor exercise period ran from September 3, 2003, until November  
23 4, 2003, during which plaintiff suffered the stress, anxiety, depression, headaches and muscle

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25           <sup>3</sup> The exhibits to which plaintiff refers are attached to the first amended complaint, of  
26 which the court takes judicial notice. (Judicial notice may be taken of court records. Valerio v.  
Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir.),  
cert. denied, 454 U.S. 1126 (1981)).

1 cramps which he claims to have suffered during each lockdown period described herein as a  
2 result of the lack of outdoor exercise. This more than eight-week lockdown (eight weeks, six  
3 days) occurred as a result of a staff stabbing assault in CSP-SAC B-Facility housing block four.  
4 Memoranda rescinding outdoor exercise were passed out to plaintiff and the other inmates that  
5 were signed by defendant CSP-SAC B-Facility Captain D. Willey and defendant B-Facility  
6 Assoc. Warden James P. Walker. Defendant Warden Mike Knowles is responsible for having  
7 approved, or otherwise permitted, the rescission of exercise and for not having intervened to keep  
8 plaintiff from suffering. SAC, p. 6, Ex. D.

9 Plaintiff states that CSP-SAC has three facilities, A, B, & C, with each having  
10 eight individual housing units; all are Level 4, one eighty (180) designed. All cells are the same  
11 size with the same showers and dayroom design. Each facility's housing unit has a mini concrete  
12 yard, along with a main exercise yard. Inmates in Administrative Segregation (Ad Seg) have  
13 access to the mini-concrete yard ten days (mandatory) after placement in Ad Seg. Plaintiff  
14 alleges that Ad Seg inmates after ten days are allowed mini concrete yard access that general  
15 population (GP) inmates are deprived of for months at a time. Plaintiff contends that GP inmates  
16 should be allowed access to these mini yards after the facility search during the investigative  
17 stages. SAC, p. 7.

18 Plaintiff contends that the four stabbing assaults were isolated and/or spontaneous,  
19 that the deprivation of outdoor exercise was punitive and retaliatory, rather than based on safety  
20 or security concerns; that investigations of stabbing assaults involving staff take months, while  
21 the entire facility, when incidents other than staff assaults are implicated, can and have been  
22 searched in a matter of days. SAC, p. 8, Exs. E, F & G. Only staff assaults are deemed serious.  
23 Analysis of the need for a lockdown should be based on whether an assault was spontaneous and  
24 isolated and whether a continued threat exists in the GP, not needlessly prolonged ostensibly for  
25 security reasons, but in actuality as a form of punishment and retaliation. SAC, p. 9.

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1 Plaintiff seeks both injunctive relief and money damages.<sup>4</sup>

2 Motion for Summary Judgment

3 Defendants move for summary judgment on the grounds that: 1) the undisputed  
4 facts show defendants did not act maliciously or sadistically, or with deliberate indifference, in  
5 violation of plaintiff rights under the Eighth Amendment, that is, a) the lockdown(s) were  
6 properly imposed and maintained for staff and inmate safety and security, and b) there were no  
7 feasible exercise alternatives during the lockdown(s); and 2) each defendant is entitled to  
8 qualified immunity because a reasonable person in each defendant's position could have believed  
9 his or her conduct was lawful. Notice of Motion for Summary Judgment (NMSJ), p. 1, MSJ  
10 Memorandum (hereafter, MSJ), p. 2.

11 Legal Standard for Summary Judgment

12 Summary judgment is appropriate when it is demonstrated that the standard set  
13 forth in Fed. R. Civ. P. 56(c) is met. "The judgment sought shall be rendered forthwith if . . .  
14 there is no genuine issue as to any material fact, and . . . the moving party is entitled to judgment  
15 as a matter of law." Fed. R. Civ. P. 56(c).

16 Under summary judgment practice, the moving party  
17 always bears the initial responsibility of informing the district court  
18 of the basis for its motion, and identifying those portions of "the  
19 pleadings, depositions, answers to interrogatories, and admissions  
20 on file, together with the affidavits, if any," which it believes  
21 demonstrate the absence of a genuine issue of material fact.  
22 Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct., 2548, 2553 (1986). "[W]here the  
23 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary  
24 judgment motion may properly be made in reliance solely on the 'pleadings, depositions, answers

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24 <sup>4</sup> Even with the broadest construction of plaintiff's allegations, which the court grants, in  
25 consideration of both the liberal pleading rules of federal courts and plaintiff's pro se status,  
26 plaintiff simply has not framed any colorable Fourteenth Amendment equal protection claim.  
Plaintiff's claims center wholly on allegations of violations of his rights under the Eighth  
Amendment.

1 to interrogatories, and admissions on file.” Id. Indeed, summary judgment should be entered,  
2 after adequate time for discovery and upon motion, against a party who fails to make a showing  
3 sufficient to establish the existence of an element essential to that party’s case, and on which that  
4 party will bear the burden of proof at trial. See id. at 322, 106 S. Ct. at 2552. “[A] complete  
5 failure of proof concerning an essential element of the nonmoving party’s case necessarily  
6 renders all other facts immaterial.” Id. In such a circumstance, summary judgment should be  
7 granted, “so long as whatever is before the district court demonstrates that the standard for entry  
8 of summary judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323, 106 S. Ct. at 2553.

9           If the moving party meets its initial responsibility, the burden then shifts to the  
10 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
11 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356  
12 (1986). In attempting to establish the existence of this factual dispute, the opposing party may  
13 not rely upon the allegations or denials of its pleadings but is required to tender evidence of  
14 specific facts in the form of affidavits, and/or admissible discovery material, in support of its  
15 contention that the dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11,  
16 106 S. Ct. at 1356 n. 11. The opposing party must demonstrate that the fact in contention is  
17 material, i.e., a fact that might affect the outcome of the suit under the governing law, see  
18 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); T.W. Elec.  
19 Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987), and that the  
20 dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the  
21 nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

22           In the endeavor to establish the existence of a factual dispute, the opposing party  
23 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the  
24 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing  
25 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary  
26 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a

genuine need for trial.’” Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356 (quoting Fed. R. Civ. P. 56(e) advisory committee’s note on 1963 amendments).

In resolving the summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson, 477 U.S. at 255, 106 S. Ct. at 2513. All reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587, 106 S. Ct. 1356 (citation omitted).

On October 27, 2004, and again on October 6, 2005, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988).

#### *Injunctive Relief Claims Mooted*

The court observes that plaintiff filed a notice of change of address to Tehachapi on June 26, 2006. This prison transfer occurred after this motion for summary judgment was submitted, so the motion does not include as a ground that plaintiff’s requests for injunctive relief have now been mooted. Nevertheless, the court sua sponte finds that when an inmate seeks injunctive relief concerning an institution at which he is no longer incarcerated, his claims for such relief become moot. See Sample v. Borg, 870 F.2d 563 (9th Cir. 1989); Darring v.

1 Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986). See also Reimers v. Oregon, 863 F.2d 630, 632  
2 (9th Cir. 1988). Plaintiff has demonstrated no reasonable possibility that he will be incarcerated  
3 at CSP-Sac at any predictable time in the future. Accordingly, judgment should be entered for  
4 defendants as to the claims for injunctive relief plaintiff makes in this case.

5 Undisputed and Disputed Facts

6 Plaintiff attempts to take issue with a majority of defendants' undisputed facts;  
7 however, unless he provides some evidentiary basis for an objection to a fact for which  
8 defendants provide evidentiary support, the objection will be noted but found to be without merit  
9 and the fact at issue will be deemed undisputed.

10 On March 1, 1995, plaintiff, Gregory Lynn Norwood, was sentenced to a term of  
11 life without the possibility of parole in state prison following convictions for first degree murder  
12 (Cal. Pen. Code § 187(a)) and second degree robbery (Cal. Pen. Code § 211). At all times  
13 relevant to this action, plaintiff, a black inmate, was incarcerated at the California State Prison in  
14 Sacramento (CSP-Sac) in Facility B. DUF # 1. Plaintiff asserts that he is classified as a non-  
15 affiliated inmate, and the court has been able to locate among his filings a copy of a 1998  
16 classification committee report for plaintiff which includes in the report "Gangs: None."  
17 Opposition (Opp.), Ex. C, Ex. 14, p. 3. Plaintiff includes an exhibit which states that in 6/9/95,  
18 when he was received at CSP-Sac, he was placed in Ad Seg and remained there pending a review  
19 because his central file showed him to be a member of the Black Gorilla Family Prison Gang.  
20 Opp., Ex. 12, p. 1. In July, 1995, plaintiff received a CDC-128 B chrono which states that after a  
21 June, 1995 review, it was found that there was insufficient information in his file to indicate "any  
22 prison gang or disruptive group activities." Opp., Ex. 12, p. 2. Plaintiff apparently indicated in  
23 an interview at the time that he associated with a Crips gang on the streets but not in prison. Id.  
24 However, none of this disputes the fact that plaintiff was a black inmate incarcerated at CSP-Sac  
25 during the times at issue in this action, which fact remains undisputed.

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1 At all times relevant to this action, defendants were employed by the California  
2 Department of Corrections and Rehabilitation (CDCR) at CSP-Sac. Cheryl Pliler was the  
3 Warden of CSP-Sac from July 1998 to October 2003; Michael Knowles was the Warden of CSP-  
4 Sac beginning in October 2003; Steve Vance was the Captain of Facility B from September 2001  
5 to September 2003; David Willey was the Acting Facility B Captain, from September 2, 2003 to  
6 September 19, 2003, and from October 14, 2003 to January 16, 2004; James Walker was the  
7 Acting Facility B Associate Warden, in September 2003; Thomas Goughnour was the Facility B  
8 Associate Warden during the May 2002 lockdown; and Michael Martel was the Facility B  
9 Associate Warden beginning in March 2003. DUF # 2.

10 Since its creation, CSP-Sac has been a Level IV prison – a maximum security  
11 prison – because the inmates confined at that institution are deemed to pose the greatest threats to  
12 institutional security and safety of staff. DUF # 3, supported by defendant Walker’s declaration.  
13 Plaintiff seeks to dispute this fact by asserting that not all inmates housed at CSP-Sac pose a  
14 security threat, that many are “virtually free of any disciplinary acts of violence....,” but are  
15 deemed Level IV inmates because of the sentences they received upon conviction. Opp., Ex. C,  
16 p. 1. None of this sufficiently refutes defendant Walker’s declaration, currently Acting Warden  
17 of CSP-Sac, based on his personal knowledge, and this fact remains undisputed.

18 CSP-Sacramento is organized in three identical sets of buildings – Facility A, B,  
19 and C – with each facility comprised of eight blocks, and each block consisting of 64 cells and  
20 128 beds. DUF # 4.

21 Facility A is considered a “soft” yard. This is because the inmates housed in  
22 Facility A are the former “protective custody” inmates, or those with “sensitive needs.” These  
23 inmates tend to be very compliant and generally non-violent. This is a mellow yard where there  
24 may be one serious incident per year. Facility C generally houses inmates who want to program  
25 and stay out of trouble. Facility B traditionally has housed inmates who refuse to program and  
26 consistently get into trouble. DUF # 5, supported by defendant Walker’s declaration. Plaintiff

1 takes issue with the characterization of Facility A as a “soft yard,” averring that it is a yard  
2 housing protective custody, Ad Seg, and psychiatric unit inmates per CAL. CODE REGS. tit.XV, §  
3 3341.5. Opp., Ex. C, p. 2. Defendant Walker’s description, however, is not refuted by this  
4 regulation.

5 Plaintiff concedes that Facility B has less jobs than the other facilities, and the  
6 most “SHU kickouts,” but also avers that it has had less riots since 1999. Id. He also maintains  
7 that when there is no room available in B-Facility or an inmate has an enemy there, one stays in  
8 B-Facility and the other is sent to C-Facility. Plaintiff’s objections, however, do not materially  
9 dispute defendant Walker’s representation based on his personal knowledge.

10 During 2002 and 2003, approximately 1,000 prisoners were confined in each of  
11 the three facilities at CSP-Sacramento. The prisoners in each facility were of all races and ethnic  
12 groups – black, white, Hispanic, Asian, American Indian, etc. DUF # 6.

13 At CSP-Sac, each facility is self-contained and built around a yard where, absent  
14 unusual conditions, inmates are allowed to exercise daily. DUF # 7.

15 Each facility also has four small yards, also referred to as concrete yards. There  
16 is one concrete yard between each of the eight housing blocks. These are very small yards  
17 measuring about 50 by 50 feet. These yards were not intended to be used for general population  
18 exercise. At most, about 20 inmates can be placed on these yards at a time. DUF # 8.

19 Defendants rely again on defendant Walker’s declaration in support of these facts. Plaintiff  
20 disputes that any one inmate has the opportunity for exercise every day, stating that general  
21 population (GP) inmates, when allowed access, are given two-hour exercise periods every other  
22 day. Op., Ex. C, p. 2. However, the defendants merely set forth that, under normal conditions,  
23 there are daily exercise periods for inmates, not that each inmate has a daily exercise period.

24 Plaintiff agrees that about 20 inmates at a time are placed on the small concrete  
25 yards, but argues that the facilities do not have a small yard between each housing unit, so that  
26 two buildings share one mini-concrete yard, but states that in B-Facility there is a small concrete

1 yard attached to each building but Building 5, such that inmates in that building go to the  
2 concrete yards for Buildings 6, 7, and 8. Id. In his verified second amended complaint, plaintiff  
3 states that each housing unit has its own mini-concrete yard. Plaintiff asserts in Ex. E, p. 5, to his  
4 Opp., that there are seven mini-concrete yards in B-Facility. After much searching the court  
5 located plaintiff's declaration wherein he sets forth that in his years at CSP-Sac, he has been in  
6 each of the eight housing units of B-Facility and all but one has a mini-concrete yard, for a total  
7 of seven. Opp., Ex. F, p. 15. Therefore, as to the number of small concrete yards, at least in B-  
8 Facility, defendants' assertion that there are only four is disputed. Plaintiff also seeks to dispute  
9 that the yards measure 50 feet by 50 feet, maintaining instead that "they are slightly bigger in  
10 length, and bigger in width than [sic] length." Id. Plaintiff points to no exhibit to clarify his  
11 representations as to the size of these concrete yards; therefore, as to the size of these yards that  
12 fact is essentially undisputed.

13           In certain circumstances, one or more of the several concrete yards have been used  
14 as areas for inmates to exercise in modified programs, but only when staff are certain that  
15 inmates will not assault one another and it is safe to release inmates to such yards. DUF # 9.  
16 Plaintiff seeks to dispute this fact by saying that the mini-concrete yards are used for lengthy time  
17 periods when cells are being searched and/or during lockdowns. Opp., Ex. C, p. 3. He asserts  
18 that black inmates go to the mini-concrete yards at different times from when whites go which is  
19 different from the time when Hispanics go, with whites and Hispanics occasionally going at the  
20 same time. Id. He also asserts that officials cannot prevent fights on any yard but can only  
21 minimize injury by preventing weapons from coming on the yards by conducting strip searches  
22 as they do routinely. Id. None of these contentions substantively dispute defendants'  
23 representation that inmates in these areas are in modified programs, although plaintiff is probably  
24 correct that staff can never be certain that inmates will not assault each other. However, it is  
25 plain that defendants make limited use of the mini-concrete yards, which is not refuted by  
26 plaintiff.

1 A lockdown is the restriction of all inmates to their cells/dormitory beds  
2 encompassing no less than a housing unit. True lockdowns are rare occasions, generally  
3 following very serious threats to institutional security and the safety of staff and inmates. During  
4 a lockdown, all normal programing is suspended until it is determined that it is safe to resume  
5 normal programing. DUF # 10.

6 Normal programing means inmates attend work and education programs. They  
7 are released to the yard for recreation in large groups according to their yard schedule. The yard  
8 population is limited to 150 inmates at a time. Inmates have regular visiting, canteen, and  
9 telephone privileges. They attend the law library and religious services. During a lockdown,  
10 however, these programs are suspended and inmates are confined to their cells. Inmate  
11 movement is controlled, under close supervision, and under escort with mechanical restraints.  
12 DUF # 11.

13 Pursuant to CDCR policies and procedures, whenever there is a serious incident  
14 the initial incident response is as follows: the first priority is to isolate, contain, and control the  
15 situation to the smallest area possible. Next, is to provide medical attention for all injured  
16 followed by the preservation of evidence. Staff will then identify all involved persons and ensure  
17 appropriate written documentation/reports are completed and submitted within designated time  
18 frames. DUF # 12. Plaintiff states that he is "without sufficient information to admit or deny"  
19 this representation, so he denies it. Opp., Ex. C, 4. Lack of information is, of course, wholly  
20 inadequate as the basis for disputing an issue of fact on a motion for summary judgment. Thus,  
21 this fact is undisputed.

22 Once the initial incident response is completed, assessment of the causes and  
23 determination of program activity status begins. Depending on the seriousness of the situation, it  
24 may be necessary to modify or restrict program activities. Available options are to modify  
25 programs, lockdown, or declare a State of Emergency. These options serve to restrict potentially  
26 volatile persons or groups, and affords additional time to evaluate overall operations. DUF # 13.

1 Plaintiff disputes this fact in the case of assaults on staff with weapons, asserting that in such  
2 cases, there is no program assessment, rather there is a total lockdown; he contends that even  
3 when the race classified as "others," which he maintains is locked down less than other racial  
4 groups, has yard access, this is denominated as a modified program even though other races  
5 remain totally locked down. Opp., Ex. C, 4. Plaintiff's opinion as to the protocol for response to  
6 an incident, however, does not raise a genuine issue of material fact in light of defendant  
7 Walker's personal knowledge. This fact is deemed undisputed.

8           If it is determined that a lockdown is necessary, a program status report is  
9 immediately developed to ensure both staff and inmates know what is expected. Maintaining  
10 essential services, i.e., medical/mental health, hygiene, and access to courts are mandates. The  
11 plan is reviewed regularly and revised as scheduled activities are resumed. Staff and inmates are  
12 updated as revisions are made. DUF # 14. Plaintiff contends that only hygiene is afforded in the  
13 first seven or eight weeks of a lockdown and that memoranda are not passed out "as they should  
14 be," without defining either how they are passed out or how he believes they should be. Opp.,  
15 Ex. C, 4. He does not deny that they are passed out; indeed, his filings and exhibits amply  
16 demonstrate his access to multiple copies of these memoranda. This fact is deemed undisputed.

17           The facility captain generally decides to institute a lockdown and makes the  
18 recommendation to the warden who approves or disapproves the recommendation. Once a  
19 lockdown is instituted, the warden makes the decision when it is safe to unlock and return to  
20 normal programming. DUF # 15. Plaintiff avers that the decision to institute a lockdown is not  
21 made solely by the facility captain but is a responsibility shared by an associate warden who also  
22 signs the memoranda. Opp., Ex. C, p. 5. However, this does not dispute defendant Walker's  
23 declaration that it is the facility captain who generally makes the decision about lockdowns and  
24 then makes the recommendation to the warden.

25           Following an incident that results in the decision to lock down a facility, the  
26 process of investigating and gathering intelligence begins. This includes searches of all inmate

1 cells, common areas, dining halls, janitorial rooms, and the outside yard. Searching the outside  
2 yard often consists of digging up the ground in search for weapons. The purpose of these  
3 searches is to uncover any weapons that will later be used to harm inmates or staff. DUF # 16.  
4 Plaintiff argues that that entire ground is not dug up, but only that portion which activates metal  
5 detectors. Opp., Ex. C, p. 5. Defendant Walker does not state that all of the ground is dug up,  
6 but only that digging the ground is often involved in the search process. This fact also remains  
7 undisputed.

8           While it may take anywhere from 15 to 20 days to complete a search of a facility,  
9 this time may be significantly extended if during the search critical information is discovered  
10 necessitating further searches. DUF # 17. Plaintiff contends that it does not take 20 days to  
11 conduct a search and that cell housing units are never searched twice during a lockdown. Opp.,  
12 Ex. C, p. 5. Plaintiff does not provide an adequate basis for this conclusion. Plaintiff has  
13 elsewhere stated that lockdowns to search for missing metal have not involved a long period,  
14 from nine to fourteen days, but although he provides exhibits as to when such a lockdown began,  
15 he does not present evidence, other than his own recollection, showing when they ended. See,  
16 e.g., Opp., Ex. 15, p. 1. Plaintiff does not adequately support the basis for his disagreement with  
17 a fact supported by the personal knowledge of the Acting Warden, and the court will deem the  
18 fact undisputed.

19           [While searches are conducted], inmate interviews are also conducted. Every  
20 inmate in the facility is interviewed. This can be anywhere from 1000 to 1100 inmates. Staff are  
21 also interviewed. The purpose of the interviews is to gather intelligence for the purpose of  
22 determining when it is safe to return to normal programing. The interview process may also be  
23 extended depending on the type of information obtained and the necessity for following up on  
24 leads. DUF # 18. Plaintiff disputes that with the four staff stabbing assaults at issue that the  
25 entire inmate population “accepted” an interview each time, such that the number of inmates  
26 interviewed would be reduced. Opp., Ex. C, p. 5. Plaintiff also contends that “[t]he process of

1 interviews is never extended.” Plaintiff does not adequately set forth a basis to support these  
2 conclusory statements, failing to effectively dispute the personal knowledge sworn to by  
3 defendant Walker.

4 In addition, staff are communicating with other institutions as well as  
5 headquarters to compare the intelligence gathered and ensure that it is safe to resume normal  
6 programing. It is common to have staff at other institutions interview inmates there as well as to  
7 monitor their mail and telephone communications. The main priority is always the safety of  
8 inmates and staff while working on a plan to unlock the facility. DUF # 19. Plaintiff disputes  
9 that inmates at other institutions were interviewed about the four stabbing attacks on CSP-Sac B-  
10 Facility staff. He also does not believe that inmates can help staff to gain information if the acts  
11 are spontaneous or isolated and the inmates have no information about them and that an inmate’s  
12 fear of being labeled a snitch is not what slows up an investigation. Opp., Ex. C, 6. Plaintiff  
13 does not reveal to the court how he knows that inmates at other facilities were not interviewed  
14 and his belief that lockdowns are not conducive to information-gathering is irrelevant to this fact.  
15 This fact is deemed undisputed.

16 It is the CDCR’s policy to return to full normal programing as soon as it is safe to  
17 do so. Depending on the magnitude and dynamics of the incident, movement towards full  
18 program activities will be made. DUF # 20. Although plaintiff objects to this approach, he does  
19 not deny that this is what occurs.

20 How a facility is unlocked depends greatly on the nature of the incident and is  
21 determined on a case-by-case basis. Movement back to full normal programing is planned and  
22 occurs during normal business hours when the majority of regularly scheduled staff are present  
23 and have been fully briefed on the plan of operation. DUF # 21. Plaintiff denies that when the  
24 incident at issue is an assault on staff that the unlocking is on a case-by-case basis, but he does  
25 not clarify how the process actually worked in his view. This fact is deemed undisputed.

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1           The task of releasing inmates to full normal programing is accomplished  
2 incrementally beginning with small numbers of inmates and progressing to larger numbers as it is  
3 determined that it is safe to do so. Generally, critical workers are released first. Additional  
4 increases in numbers are accomplished by expanding the critical workers list and returning  
5 inmates first to priority assignments. As inmates are returned to work assignments, their  
6 privileges are also restored incrementally. DUF # 22. Plaintiff contends that it is never unsafe to  
7 unlock uninvolved inmates. Opp., Ex. C, p. 7. The fact that plaintiff takes issue with the manner  
8 in which prisoners are released from lock down does not dispute the actual method by which they  
9 are unlocked. This fact is deemed undisputed.

10           The remaining and unassigned inmates are then included in releases for return to  
11 full programing. Generally, non-involved races are released first, followed by non-involved  
12 groups (gang affiliations), and so on. Inmates are released in small groups to the dayroom and/or  
13 the recreation yard. This provides staff an opportunity to observe their conduct in a controlled  
14 setting. During releases of these inmates, incremental positive program activities are also  
15 scheduled for them such as telephone calls, canteen, or quarterly packages. DUF # 23. Plaintiff  
16 denies that this was the process defendants took in three of the four lockdown periods at issue.  
17 Plaintiff claims that privileges came first and then critical care workers were released. Plaintiff  
18 maintains that CSP-Sac B-facility inmates were not given dayroom rights. Opp., Ex. C, p. 7.  
19 (That plaintiff also maintains that staff assaults cannot be prevented by observing inmate conduct  
20 is irrelevant to what the process is). Plaintiff does not substantively dispute this fact which sets  
21 forth what the general unlock process is and that access to a recreation yard can be an alternative  
22 to dayroom access.

23           There are times when during the unlock process, another incident will occur  
24 requiring that those inmates who have begun the incremental release process be locked down  
25 until an investigation of the incident can be completed. DUF # 24.

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1           During a lockdown, there are mandatory weekly meetings with the warden (or  
2 chief deputy warden) to discuss the status of the lockdown, in addition to daily briefings. The  
3 purpose of the meetings is to report to the warden on the status of the lockdown and to continue  
4 developing a plan to resume normal programming as soon as possible. The meetings focus on  
5 investigation updates to determine progress, review interview/intelligence results, and establish  
6 or revise the plan of operation. The warden may require more frequent meetings depending on  
7 the individual circumstances related to each lockdown. Those present at these meetings include  
8 the Warden or Chief Deputy Warden, Facility Captain, Associate Warden, Use of Force  
9 Coordinator, and any other line staff member with relevant information. DUF # 25. Plaintiff  
10 bases his dispute with this fact on his lack of information about the process (Opp., Ex. C, p. 8),  
11 which renders the fact undisputed.

12           Between the period of January 2002 through September 2003, there were four  
13 very serious inmate assaults on staff in Facility B with the use of inmate manufactured weapons.  
14 Following each incident, the decision was made to place the facility on lockdown status until an  
15 investigation could be completed and it could be determined that it was safe to unlock. DUF #  
16 26. Plaintiff does not take issue with the fact that there were four serious staff assaults from  
17 January 2002 through September 2003, involving inmate manufactured weapons. Opp., Ex. C, p.  
18 8. Nor does he deny the facility was placed on lockdown status following each incident.  
19 Therefore, in essence, plaintiff does not dispute this fact.

20           In addition to the staff assaults, there were various other incidents of violence  
21 during the relevant time period involving inmates and the use of inmate manufactured weapons.  
22 All of these factors, combined with the information that was being uncovered through interviews,  
23 searches, and monitoring of inmate mail and communications, contributed to the duration of the  
24 lockdowns. DUF # 27. Plaintiff asserts that the staff assault incidents were unrelated, that  
25 beyond the January 4, 2002 interview process, it was unnecessary to delay or deny black inmates  
26 mini-concrete yard access. He claims that the inmate involved in the January 4, 2002, attack on

1 Officer Haggard was called back by the officer as he was returning to his cell, demonstrating that  
2 the attack was not planned. Plaintiff also argues that inmate assaults involve only the race or  
3 groups who take part even when serious and that only the perpetrator's cellmate was put in Ad  
4 Seg, signifying no reliable evidence from interviews and interviews take at most three days.  
5 Opp., Ex. C, p. 8. Plaintiff mentions elsewhere that all eleven individuals involved in the attack  
6 were placed in Ad Seg as well, but his point seems to be that having no one else placed in Ad  
7 Seg means that the interviews netted no significant information and thus there was no basis for  
8 keeping uninvolved races, including blacks, locked down. However, plaintiff does not explain  
9 how he could know what information was garnered in the interview process between prison staff  
10 and other inmates. The court will deem this fact undisputed.

11 January 4, 2002 until April 3, 2002

12 Defendant Steve Vance was the Facility captain over B Facility from September  
13 2001, to September 2003. DUF # 28.

14 On January 2, 2002, an inmate turned on Officer Haggard and attempted to  
15 murder him. As staff responded to the incident, other inmates joined in and attacked responding  
16 staff members. In total, 11 inmates brutally attacked four correctional officers in the B Facility  
17 3/4 dining room. Inmate manufactured weapons were used in the attack. The involved inmates  
18 refused several orders to stop the attack. DUF # 29. Plaintiff seeks to dispute that the attack was  
19 attempted murder because he believes that an attempted murder is a planned attack and he  
20 contends that the Hispanic inmates who joined in the attack were following peer pressure rules to  
21 assist a fellow race or gangmember. Opp., Ex. C, p. 9. Plaintiff's belief as to whether or not the  
22 attack was an attempt to murder or not is essentially irrelevant without his providing any basis for  
23 it; he does not allege that he witnessed the attack. He has no information to dispute what  
24 weapons were or were not used. This fact is deemed undisputed.

25 Three of the four officers received injuries consisting of puncture wounds. They  
26 were transported to the hospital where they received treatment for their injuries. Officer Haggard

1 was hospitalized in the intensive care unit. DUF # 30.

2 As responding staff assisted in searching and escorting the involved inmates out  
3 of the dining room, staff discovered an inmate manufactured weapon on the floor between the  
4 fourth dining room table from 4 block and the wall. The weapon measured approximately 5 3/4  
5 inches long by 3/8 inches in diameter, and was constructed of a sharpened metal point measuring  
6 approximately 15/16 inches long, attached to a plastic pen to form a handle. DUF # 31.

7 During a subsequent search of the dining room by the investigative services unit,  
8 staff discovered one inmate manufactured weapon secreted inside a milk carton on the fourth  
9 dining room table from 4 block. The weapon measured approximately 4 3/4 inches long by 3/4  
10 inches in diameter. It was constructed of round metal rod, sharpened to a point at one end and  
11 wrapped with tape and cellophane at the other. DUF # 32.

12 A lockdown of all inmates in B Facility was ordered and the decision was  
13 approved by Warden Plier. Exh. B, ¶ 8. During a lockdown, inmates are confined to their cells.  
14 They are cell fed and are allowed to exit their cells for controlled showers. They are provided  
15 essential services such as medical attention. Inmates are not allowed to go to their assigned work  
16 or education programs. They are not allowed to go to the yard because of the degree of danger  
17 which presents itself when there are large numbers of inmates on a yard at the same time. DUF #  
18 33.

19 Pursuant to CDCR policy and procedures, immediately following the lockdown,  
20 an investigation was commenced into the cause of the assault on staff. It was unknown at the  
21 time whether this was an isolated incident or whether there were other possible planned attacks  
22 on staff. Staff worked diligently to identify whether there were other inmates who played a role  
23 in the attack on staff and have those inmates removed. DUF # 34. Plaintiff seeks to dispute that  
24 defendants did not know whether or not the incident was isolated or planned. Plaintiff refers to  
25 defendant Vance's response to interrogatory 5, set two, with no identification as to its location.  
26 After culling through a myriad of discovery documents plaintiff submitted with his opposition

1 (but did not cross-reference), the court located the following response, after objections were  
2 posed, to plaintiff's inquiry as to whether the January 4, 2002, incident was "planned,  
3 spontaneous or isolated." Defendant Vance responded: "The January 4, 2002 staff stabbing  
4 assault was planned by those involved." This does not supply plaintiff with adequate support to  
5 dispute that defendants did not know at the time whether or not the assault was planned. Plaintiff  
6 further avers that no other inmates than the eleven involved (and one of their cellmates,  
7 according to plaintiff earlier) were placed in Ad Seg as a result of the January 4, 2002, incident,  
8 apparently attempting to cite the incident report filed by defendants. Opp., Ex. C, p. 9.  
9 However, defendants do not assert otherwise. This fact is undisputed.

10           The first month following the incident was occupied with conducting searches,  
11 interviewing inmates and staff, and gathering intelligence from various sources. This entailed  
12 interviewing all of the inmates in B Facility consisting of approximately 1000 to 1100 inmates in  
13 the facility at that time. The inmates refused to talk for fear of retaliation by other inmates. As a  
14 result, the information was slow in coming forward. DUF # 35. Plaintiff disputes that searching  
15 the facility and interviewing inmates takes a month. He asserts that housing block floor officers  
16 conduct the interview at least at the rate of a unit a day and that a search takes 9 to 14 days for  
17 support of which he cited an unidentified exhibit. The court located one of plaintiff's many  
18 affidavits in which he bases his knowledge of how long searches take on the general knowledge  
19 of inmates without proffering any substantiating information as to when a search ended. Opp.,  
20 Ex. C, p. 10; Ex. G, p.6. This fact is deemed undisputed.

21           Additionally, staff had to conduct thorough searches of all inmate cells as well as  
22 common areas. During these searches, the main yard was dug up in search of weapons that could  
23 have been buried. DUF # 36. Plaintiff disputes that searches were more thorough than when  
24 metal is missing or would take more time and again denies that the entire yard was dug up. Opp.,  
25 Ex. C, p. 10.

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1 Furthermore, during the process of investigating and gathering intelligence, staff  
2 were presented with information which raised more questions and concerns. Because they could  
3 not be certain that this was an isolated incident, it was not safe to unlock or to begin the process  
4 of restoring yard privileges to the inmate population. DUF # 37. Defendants cite defendant  
5 Vance's declaration in support of this fact (defendants' Ex. B). Plaintiff disputes that defendants  
6 ever received reliable information that the incident was other than isolated. He contends that no  
7 reliable information ever emerged that black non-affiliated inmates were involved in a continued  
8 threat to staff. He cites defendant Vance's response to his interrogatory wherein Vance answers  
9 "No" to plaintiff's question whether any black inmate was involved in the January 4, 2002 staff  
10 stabbing assault. Opp., Opp., Ex. C, p. 10; Ex. 7, p. 3. Plaintiff's objections to defendants'  
11 representation that information presented during any investigation raised more questions and  
12 concerns is well-founded in that defendants do not provide any description of the information.  
13 This fact is disputed.

14 Also of great concern was the fact that the inmates who assaulted staff were  
15 Southern Hispanics. This prison group is the most influential, organized, and dangerous prison  
16 group. Generally, attacks such as this one do not occur unless it has been approved by the  
17 leaders of this group. Because of this, it was believed that the Southern Hispanics had put a hit  
18 out on staff. DUF # 38. Plaintiff does not deny that the Southern Hispanics were the ones  
19 involved in this incident or that they are the most dangerous of prison groups but asserts his  
20 opinion that the melee could have been caused without a leader orchestrating it. However,  
21 plaintiff does not thereby materially dispute this fact, which remains undisputed.

22 There was a very serious and viable threat to staff safety that had to be fully  
23 investigated. The threat level was the highest defendant Vance had seen in his 22-year career  
24 with CDCR. DUF # 39.

25 Staff were also investigating the possibility that the attacks had been ordered by  
26 the Mexican Mafia at Pelican Bay State Prison (PBSP). Staff was communicating with prison

1 staff at PBSB as well as other institutions and comparing information and verifying leads.  
2 Inmates at PBSB were also being interviewed in an attempt to gain information. DUF # 40.  
3 Plaintiff seeks to dispute DUF # 39 & # 40 by averring that after the eleven inmates involved  
4 were placed in Ad Seg that there was no further threat and that any further investigation was  
5 based on fear or was a fishing expedition. Plaintiff's opinion is not enough to dispute the  
6 defendant Vance's assessment based on personal knowledge. These facts are deemed  
7 undisputed.

8 Inmates in the other facilities at CSP-Sac were also being interviewed, as well as  
9 those in Ad Seg. Staff were reading inmate mail in search of information. Notes were also being  
10 passed by inmates to staff with information which had to be verified. DUF # 41. Plaintiff seeks  
11 to dispute this fact on the ground that he has no information about it, which, of course, does not  
12 raise a genuine issue of material fact. This fact is undisputed.

13 As a result, during the initial phase of the investigation, the inmates in B Facility  
14 were not permitted to return to their regular program activities, including daily yard exercise,  
15 until all involved inmates could be identified and removed from the general population and all  
16 searches for weapons had been completed. Defendant Vance and other custodial staff  
17 responsible for B Facility concluded that until the investigation was complete and all involved  
18 inmates could be identified and removed from the general population in B Facility, release of  
19 prisoners to the main exercise yard posed an unacceptable risk of renewed violence that  
20 threatened the safety of inmates and staff. DUF # 42. Plaintiff avers that all involved inmates  
21 were identified when the eleven involved in the attack were sent to Ad Seg on the day of  
22 incident, citing the Crime Incident Report (MSJ, Ex. F, p. 3); that black inmates posed no threat  
23 and that there was no reason to deny black inmates access to the small concrete yards. Opp., Ex.  
24 C, p. 12. At the time, defendant Vance was the captain of B-Facility and his assessment based on  
25 his own personal experience and knowledge and the assessment of other custodial staff to which  
26 he also refers is not disputed by plaintiff's contentions and this fact is deemed undisputed.

1           Between January 4, 2002 and March 8, 2002, through interviews and searches,  
2 staff continued to obtain information, which indicated that there was a serious and viable threat  
3 to institutional safety. While the goal was to return to normal programing, defendant Vance's  
4 first priority was to ensure the safety of staff and inmates. Due to the nature of the information  
5 that was being revealed through the investigation process, and staff's responsibility to follow all  
6 leads, it was not safe to begin the process of releasing inmates. DUF # 43. Plaintiff concedes  
7 that searches were needed, but maintains that they could have been completed within 14 days and  
8 that those not involved in the attacks could have been released to the mini-concrete yards; he  
9 disputes that the safety of non-Hispanic inmates was jeopardized. Because defendants do not in  
10 any way demonstrate or describe the information that they represent that they obtained upon  
11 which they found a serious, viable threat, preventing them from processing the release of inmates  
12 to normal programming, the court finds plaintiff's dispute as to this fact raises a genuine issue of  
13 material fact.

14           Also, on February 22, 2002, there was another attempted murder of a peace officer  
15 by inmates in C-Facility. This incident occurred only one day after C-Facility began the process  
16 of unlocking that facility. While this incident occurred in a different facility, it affected both A-  
17 Facility and B-Facility because of the nature of the assault on staff and the fact that there existed  
18 a viable threat against staff members. DUF # 44. Plaintiff contends that the incident in C-  
19 Facility did not implicate B-Facility and that the fact that 14 days later B-Facility was being  
20 unlocked demonstrates this; moreover, plaintiff declares that no investigation was conducted on  
21 B-Facility re: the February 22, 2002 assault in C-Facility. Opp., Ex. C, p. 13; Ex. G, p. 3. The  
22 problem with this opinion is that plaintiff does not make clear how he could know if any  
23 investigation concerning this incident took place on B-Facility. Moreover, defendants do not  
24 state that they conducted such an investigation, merely that it indicated a threat to staff and that it  
25 had an impact on A-Facility and B-Facility. This fact is deemed undisputed.

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1 On March 8, 2002, staff began the process of releasing inmates in B-Facility to  
2 normal programing. Pursuant to CDCR policy, the critical workers were released first by giving  
3 them the opportunity to go to the yard for exercise on Saturdays and Sundays, and restoring  
4 various other programs and privileges to this group. This group consisted of approximately 95  
5 inmates. This allowed staff to observe these inmates in relatively small numbers. On March 14,  
6 2002, about 35 critical workers were added to the group. DUF # 45. Plaintiff disputes that the  
7 release of critical workers first is pursuant to CDCR policy but does not show how it does not  
8 comport with that policy in the face of defendant Vance's declaration based on his personal  
9 knowledge. This fact is deemed undisputed.

10 On March 27, 2002, the critical worker's list was augmented to include  
11 approximately 210 workers, including plaintiff. DUF # 46. Plaintiff does not dispute this fact  
12 but actually represents that he was released a day earlier, rendering this fact essentially  
13 undisputed.

14 Other groups of inmates were incrementally added to the list of inmates to be  
15 released. By April 3, 2002, all non-Hispanic inmates in B Facility were allowed to go to the yard  
16 for exercise according to an approved yard schedule. DUF # 47.

17 On April 15, 2002, a stabbing/slashing assault occurred on the main exercise yard  
18 involving white inmates. This incident delayed efforts to resume a full normal program,  
19 however, staff continued to work diligently in doing so. DUF # 48. Plaintiff disputes that he  
20 ever was locked down due to this incident, but that does not dispute defendants' point that this  
21 incident delayed the resumption of a full normal program. This fact is deemed undisputed.

22 The entire time, weekly meetings with the warden, associate warden, Facility  
23 captain, Use of Force coordinator and other critical staff members were taking place to discuss  
24 the progress made and the status of the lockdown. DUF # 49. Plaintiff sets forth no basis to  
25 dispute this fact but nevertheless seeks to do so. This fact is deemed undisputed.

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1           May 8, 2002, until July 31, 2002

2           On May 8, 2002, while still in the process of resuming a full normal program in  
3 B-Facility, Officer Tuter was attacked by a black inmate with an inmate-manufactured weapon.  
4 The inmate aggressively attacked Officer Tuter by striking him repeatedly in the head with a  
5 weapon. The weapon was 4 & ½ inches long, ½ inch wide, 1/4 inch thick, and sharpened to a  
6 point at one end. The other end was covered in two inches of plastic wrap as a handle. The  
7 weapon appeared to have been fashioned from a tooth brush. DUF # 50. MSJ, Exh. B, Vance  
8 Declaration ¶ 25; Exh. G, 5/8/02 Crime Incident Report. Plaintiff denies that prison officials  
9 were in process of resuming a full normal program in B-Facility because whites were still locked  
10 down. Plaintiff does not make clear how he knows whites were still locked down; more  
11 significantly, he does not show how even if they were, how that would signify that staff was not  
12 in the process of resuming a normal program. This fact is deemed undisputed.

13           As a result of the attack on Officer Tuter, as well as the prior January 4, 2002,  
14 attack on other staff members, and the April 15, 2002, stabbing/slashing assault by white  
15 inmates, defendant Vance ordered a lockdown of all inmates in B-Facility. The decision was  
16 approved by Terry Rosario who was the acting warden at that time. DUF # 51. Plaintiff takes  
17 issue with whether or not any of these incidents were related, contending that each was an  
18 isolated event (Opp., Ex. C, pp. 1-16), but this does not materially dispute what defendant Vance  
19 states was behind his decision to order a lockdown. This fact is deemed undisputed.

20           All programs were suspended, including the use of the yard for recreation  
21 purposes. DUF # 52. Plaintiff contends that white inmates (except for critical workers) and  
22 Southern Hispanics were still on lockdown from the April 15, 2002, assault and the January 4,  
23 2002, incident, respectively, so only black inmates actually had programs suspended by the May  
24 8, 2002, incident. However, as that means that all inmates had program suspended at this point,  
25 there is no dispute as to this fact.

26       \\\\\\

1 Pursuant to CDCR policy and procedures, immediately following the lockdown,  
2 an investigation was commenced into the cause of the attack of Officer Tuter. This included a  
3 search of all cells and common areas, interviews with all inmates and staff, and gathering of  
4 intelligence and information from other sources. DUF # 53. Plaintiff protests that an  
5 investigation was unnecessary, pointing to defendant Vance's response to one of plaintiff's  
6 interrogatories in support of the finding that a lone inmate was responsible for the May 8, 2002,  
7 incident. However, defendant Vance's response to plaintiff's query on the subject of who was  
8 responsible for that incident does not support his position that no investigation was needed: "At  
9 the time of the assault on Officer Tuter, we did not know if the assault had been planned and  
10 carried out by one inmate, or by a number of inmates. At the conclusion of the investigation, it  
11 was determined that the assaulting inmate was acting alone." Opp., Ex. C, p. 16; Ex. 7, p. 4.  
12 This fact is deemed undisputed.

13 Inmates were not talking and the information was slow in coming forward. DUF  
14 # 54. Plaintiff asserts that inmates were not talking because they did not know anything as the  
15 incident was isolated. However, whether this is true or not, it does not dispute the fact as set  
16 forth by defendant Vance based on his personal knowledge.

17 By July 1, 2002, some of the privileges were being restored to inmates such as  
18 visiting, canteen, packages, and telephone access. On July 11, 2002, Southern Hispanics and  
19 Mexican nationals were allowed to use the small concrete yards for recreation in groups of up to  
20 16 inmates per yard. The whites, American Indians, others,<sup>5</sup> and critical workers were released  
21 to the main yard in groups of up to 50 at a time. By July 16, 2002, Southern Hispanics were  
22 released to the small concrete yards in groups of up to 20 inmates. Whites, American Indians,  
23 Mexican nationals, and others were released to the main yard in groups of up to 100 inmates. By  
24 July 31, 2002, blacks were released to the small concrete yards in groups of up to 20 inmates

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25 <sup>5</sup> Defendants state that the classification of "Other" is given to the Asian and Pacific  
26 Islander group of inmates.

1 and all other inmates were normal with a maximum of 150 inmates on the main yard at a time.  
2 DUF # 55. Plaintiff does not really dispute the facts as set forth, that is, he does not raise an  
3 issue as to when privileges and exercise periods were restored to which group of inmates, but  
4 simply maintains that privileges and exercise were not restored as a result of the investigation  
5 having uncovered any information, but only because no progress was made, which does not  
6 dispute the fact as declared by defendant Vance.

7 Over the course of the next few months, staff continued to work towards resuming  
8 a full normal program in all respects. On occasion, they experienced some setbacks resulting in  
9 temporarily suspending yard and privileges at various times due to threats on staff and inmate  
10 safety, or based on information received indicating there was a threat of violence. Nonetheless,  
11 Defendant Vance and other staff continued to work towards the goal of resuming a full normal  
12 program. DUF # 56. Plaintiff does not dispute this fact substantively but merely states that a  
13 full normal program is not needed, only access to the a mini-concrete yard. This fact is not  
14 disputed.

15 The entire time, meetings with the warden, associate warden, Facility captain, Use  
16 of Force coordinator and other critical staff members were taking place to discuss the progress  
17 made and the status of the lockdown. The meetings were taking place at least twice a week.  
18 DUF # 57. Plaintiff has no basis to dispute this fact and admits it but still seeks to do so. Opp.,  
19 Ex. C, p. 18. (From this point, the court, without noting it, will simply deem a fact undisputed if  
20 plaintiff offers an opinion without making a relevant point or does not proffer at least some basis  
21 for a dispute).

22 December 28, 2002, and ended on June 1, 2003

23 On December 28, 2002, a riot occurred on the B Facility main exercise yard where  
24 a large number of black inmates attacked and physically assaulted staff. The attack began when  
25 Sergeant (Sgt.) Murphy observed two inmates engaged in what appeared to be a fistfight on the B  
26 Facility main exercise yard. Sgt. Murphy ordered the two inmates to stop and get down, but they

1 did not comply. Sgt. Murphy instructed the central tower officer to order the yard down.<sup>6</sup> Sgt.  
2 Murphy used his O.C. pepper spray on the two inmates and they immediately got down on the  
3 ground. Sgt. Murphy was then attacked by another inmate. At the same time, numerous other  
4 inmates got up and ran towards Sgt. Murphy to attack him. Sgt. Murphy was forced to the  
5 ground and five inmates jumped on him and struck him numerous times. DUF # 58. MSJ, Exh.  
6 B, Vance declaration ¶ 33; Exh. H, Crime Incident Report for incident on 12/28/02.

7 As other staff members responded to the yard, inmates got up from the prone  
8 position and attacked the responding staff. Many of the inmates had inmate manufactured  
9 weapons. In total, six inmate manufactured weapons were recovered. DUF # 59.

10 Based on subsequent staff interviews and reports, it was determined that the fist  
11 fight between the two inmates was a diversion for the purpose of distracting and attacking staff.  
12 Further investigation and review of the videotapes of the incident identified at least 24 inmates as  
13 active participants on the staff assaults. DUF # 60. Plaintiff purports to dispute both defendant  
14 Vance's declaration and the finding in the Crime Incident Report that there were 24 inmates  
15 involved because defendant Vance stated in an interrogatory response that "at least a dozen gang  
16 affiliated Crips were involved in the assaults on staff on December 28, 2002." Opp., Ex. C, p.  
17 18; Ex. 7, p. 4. Defendant Vance's interrogatory response does not dispute his declaration or the  
18 Incident Report. This fact is undisputed.

19 Nine staff members sustained injuries as a result of this incident. DUF # 61.

20 At the time of this incident, B-Facility was still in the process of unlocking and  
21 resuming a full normal program. This incident, coupled with numerous other incidents of  
22 violence between the inmates, led to defendant Vance instituting a full lockdown again. DUF #  
23 62.

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26 <sup>6</sup> Defendants explain that "yard down" requires that all the inmates get down in the prone position and remain in that position until staff instruct them to get up.

1           The other incidents of violence included an incident on August 22, 2002, on the  
2 B-Facility 7 block and 2 block mini concrete yards involving white and Hispanic inmates, where  
3 numerous inmates received serious injuries. Subsequent to this incident, numerous inmate-  
4 manufactured weapons were discovered in possession of the white and Southern Hispanic  
5 inmates. DUF # 63.

6           Also, on October 3, 2002, during the unlock process, another incident occurred on  
7 the B-Facility main yard involving white and Hispanic inmates which also resulted in several  
8 inmates receiving serious injuries. Again, numerous inmate manufactured weapons were  
9 discovered in possession of the white and Southern Hispanic inmates. DUF # 64.

10           Finally, on December 15, 2002, during evening showers, another incident  
11 occurred involving white and Hispanic inmates resulting in an inmate receiving serious injuries.  
12 DUF # 65. Plaintiff expressly agrees with this fact. Opp., Ex. C, p. 19.

13           Due to all of these violent incidents, it was determined that there was a threat to  
14 everyone's safety and security and therefore, all Level IV inmates would remain on lockdown  
15 status until further notice. DUF # 66. Plaintiff points to his Ex. 17, a copy of an August 19,  
16 1999, memorandum which sets forth an unlock procedure and which plaintiff contends supports  
17 his contention that white, black and Hispanic inmates could have been separated and given  
18 access to the mini-yards; in other words, plaintiff asserts that full lockdown status was not  
19 required for non gang-affiliated blacks (or whites or Hispanics). Opp., Ex. C, p. 19; Ex. 17.  
20 Notwithstanding, this does not dispute the fact that prison authorities determined there was a  
21 threat and ordered a lockdown. This fact is deemed undisputed.

22           An investigation into the December 28, 2002, attack on staff was immediately  
23 commenced. This included a search of all cells and common areas, interviews with all inmates  
24 and staff, and gathering of intelligence and information from other sources. DUF # 67.

25           Over the course of the next several months, staff continued to work towards  
26 resuming a full normal program in all respects, encountering setbacks in the process. On

1 February 16, 2003, an incident occurred in B-Facility 4 block involving white inmates and the  
2 use of a deadly weapon, causing a delay in staff's efforts to unlock the facility. Nonetheless,  
3 defendant Vance and his staff continued to work towards the goal of resuming a full normal  
4 program. DUF # 68. Plaintiff contends that a full normal program could not exist with white  
5 and Hispanic inmates at war, and with whites assaulting each other; however, he avers that non-  
6 affiliated black inmates did not need to be separated from each other, nor did Hispanic inmates.  
7 Ex. C, p. 20. Whether true or not, none of this disputes the fact as set forth.

8 By February 21, 2003, the process of unlocking B-Facility began. Staff started by  
9 releasing a small number of uninvolved inmates first and observing their behavior prior to adding  
10 to the groups. On March 18, 2003, they began releasing the whites and Hispanics to the small  
11 concrete yards in small groups. DUF # 69. Plaintiff protests that this took too long but does not  
12 actually dispute the fact.

13 Staff continued to encounter setbacks. On May 5, 2003, there were two separate  
14 stabbing assaults involving white inmates in which both victims sustained serious injuries. On  
15 June 1, 2003, there was a slashing incident involving white inmates. Staff, however, continued  
16 moving forward with the plan to incrementally unlock the facility. DUF # 70.

17 By May 15, 2003, Asians and American Indians were released to the yard on a  
18 normal schedule. Hispanics were released to the small cement yards. Blacks were released to  
19 the small cement yards on a rotating schedule. DUF # 71. Plaintiff protests that all these groups  
20 could have received mini-yard access sooner, but this, of course, does not dispute the fact of  
21 when the releases actually occurred.

22 As with all other lockdown situations, weekly meetings with the warden, associate  
23 warden, Facility captain, Use of Force coordinator and other critical staff members were taking  
24 place to discuss the progress made and the status of the lockdown. These meetings were taking  
25 place more often than once a week. DUF # 72.

26 \\\

1        September 3, 2003, until November 4, 2003

2                Defendant David Willey was in the position of Acting Captain of Facility B from  
3        September 2, 2003 to September 19, 2003, and then again from October 14, 2003 to January 16,  
4        2004. DUF # 73. MSJ, Ex. C, defendant Willey's declaration ¶ 3.

5                On September 3, 2003, Officer Curry was brutally attacked by an inmate with an  
6        inmate manufactured weapon (metal can lid). Officer Curry was slashed numerous times in the  
7        face and neck areas, punched in the nose, and flung down the stairs by the inmate. DUF # 74.  
8        Exh. C, ¶ 4; Exh. I, Crime Incident Report for 9/3/03 incident.

9                As a result of the attack on Officer Curry, defendant Willey ordered a lockdown of  
10       all inmates in Facility B. The decision was approved by the defendant warden. Based on staff's  
11       perceptions of the staff assault and the injuries incurred, defendant Willey believed it would be  
12       prudent to lock down the inmates and attempt to find out the dynamics of the assault on staff and  
13       at the same time give staff an opportunity to decompress after the trauma of the incident.  
14       Defendant Willey also believed that due to the unusual number of staff assaults, which had taken  
15       place in a relatively short period of time, it was necessary to conduct an investigation to gather  
16       information from inmates willing to talk with staff concerning the reasons for the staff assaults.  
17       Prison officials needed to ascertain the causes of the attack and whether there was a conspiracy to  
18       attack staff. DUF # 75. Plaintiff points to interrogatory responses by defendants Vance 12/28/02  
19       attack was committed by Crips, see above, and defendant Walker, Opp., Ex. 8, p. 3, which shows  
20       that the 9/3/03 assault was initiated by a Crips-affiliated inmate. This does not dispute the fact as  
21       set forth by defendants.

22                Additionally, because of the unusually high number of recent staff assaults, a State  
23       of Emergency was declared by the director of the CDCR. A state of emergency can only be  
24       declared by the director. During a state of emergency, the warden may authorize the  
25       postponement of nonessential administrative decisions, actions, and the normal time  
26       requirements for such decisions and actions as deemed necessary because of the emergency.

1 This may include, but is not limited to, classification committee hearings, disciplinary  
2 proceedings, and the review and action on inmate appeals. DUF # 76.

3 Immediately following the lockdown, an investigation was commenced. The  
4 investigation involved interviewing all inmates and conducting searches. There were  
5 approximately 1000 to 1100 inmates in Facility B and all inmates had to be interviewed. This is  
6 a time-consuming process because the inmates had to be removed from their cells and escorted to  
7 the program office to be interviewed one at a time. DUF # 77. Plaintiff asserts that interviews  
8 are quickly completed, involving a few formulaic questions, but he does not provide adequate  
9 support for how he could know how any inmate's interview other than his own could have  
10 unfolded. This fact is deemed undisputed.

11 In many instances, inmates refused to talk for fear of being labeled snitches. For  
12 example, when an inmate is removed for an interview, the other inmates in the housing unit  
13 know why he has been removed from his cell. If the inmate is gone for a long period of time, say  
14 an hour, and all other inmates were only gone for 15 minutes, the others assume the inmate is  
15 "talking" and this may jeopardize the safety of that inmate because he is now labeled a snitch.  
16 Therefore, staff was forced to use other means or excuses for removing inmates who had  
17 information they were willing to divulge. The process took a great deal of time to complete.  
18 DUF # 78.

19 The weeks following the incident were also occupied with conducting searches.  
20 Every cell had to be searched, as well as all common areas. This too is a very time-consuming  
21 process that takes several weeks to complete. DUF # 79. Plaintiff repeatedly takes issue with the  
22 amount of time defendants state that it takes to complete searches, asserting that it takes twenty  
23 to thirty minutes to search a cell, that there are twenty to twenty-four cells in a section, three  
24 sections to a block and eight housing blocks, and that at most even if each second and third  
25 watch searched a section a day, it would not take more than 14 days to conduct a search in total.  
26 Opp., Ex. C, p. 23. Plaintiff raises some dispute as to the precise length of time it should take



1 officials to conduct a search; although defendant Willey does not posit a particular length of time  
2 in this fact, plaintiff raises an issue with respect to how time-consuming the search could be.

3 Furthermore, during the interview process and searches, information was  
4 discovered or leads were given, which had to be pursued. For example, during interviews,  
5 information was divulged indicating that more assaults on staff were planned. These leads had to  
6 be followed and fully investigated before inmates could be released to their normal programs.  
7 For example, staff received information that the attack on Officer Curry was the result of a  
8 personal conflict the inmate had with another staff member and Officer Curry was the target of  
9 opportunity. However, staff also received information that inmates affiliated with the Blue Note  
10 Crips were conspiring to assault staff. In light of this information, it was not safe to release  
11 inmates prior to investigating and having a certainty that no further violence was planned. DUF  
12 # 80.

13 Additionally, the information discovered had to be shared with other institutions.  
14 Information is routinely shared with all other institutions via the Incident Report. The Incident  
15 Report is sent to CDCR Headquarters for tracking purposes. The Incident Report is also given to  
16 the Law Enforcement Investigative Unit (LEIU) for information gathering. The LEIU is able, by  
17 way of these reports, to advise the director of any patterns that may be occurring statewide. For  
18 example, staff would be able to determine if a particular ethnic group, prison gang, or disruptive  
19 group was committing an unusual number of staff assaults. This information is shared via  
20 conference calls with the director's office to all institutions, as well as e-mails. DUF # 81.

21 This process took time, and in this case, it took approximately four weeks before  
22 prison officials felt they had sufficient information to begin the process of incrementally  
23 unlocking the inmates in Facility B. The main priority was to ensure the safety and security of all  
24 staff and inmates. The only way to do so was to conduct an investigation and to keep the inmate  
25 population locked down until it could be determined that it was safe to begin unlocking the  
26 inmates. It was simply not safe to release inmates to yards in great numbers without being

1 confident that similar attacks would not occur. DUF # 82.

2           Releasing the inmates to the small yards was not a feasible alternative at that time  
3 because officials were still in the process of gathering information and were not confident that it  
4 was safe for either staff or inmates to be released even in small groups of 20. Prison officials did  
5 not have the information available to determine if a threat to staff existed with the inmates.  
6 Releasing inmates at this point with little or no information could result in more staff/inmate  
7 assaults as the inmates were being processed out to the yard, even in small groups. Without  
8 reliable information, inmates allowed to go to the yard could, in fact, have enemies being  
9 released at the same time. DUF # 83. Plaintiff disputes that it would have been unsafe to release  
10 inmates in small groups, segregated on the basis of ethnicity, who were not among the group  
11 involved in the attack. Plaintiff avers that the method could have been similar to the Ad Seg  
12 process, whereby inmates are handcuffed one cell at a time, with a metal detector wanded over  
13 them. Opp. Ex. C, p. 24. This fact is in dispute.

14           By October 14, 2003, white, Hispanic, and other inmates began to be released for  
15 normal programing, including the yard, while the investigation was ongoing. On November 4,  
16 2003, the lockdown was lifted for non-Crip black inmates. By December 3, 2003, Facility B  
17 returned to normal programing. DUF # 84.

18           As groups of inmates were being incrementally unlocked, prison officials  
19 continued to investigate and obtain information. Part of this process included observing the  
20 conduct and behavior of those inmates as they were unlocked. DUF # 85.

21           While the lockdown was instituted as a result of the September 3, 2003, assault on  
22 Officer Curry, the length of the lockdown was directly affected by the information obtained  
23 during the investigation following the assault. It was also affected by “incidents” between the  
24 groups of inmates which occurred during the investigation and the process of incrementally  
25 unlocking. All of these factors were critical in the decisions during the lockdown. DUF # 86.  
26 Plaintiff disputes that any information gathered related to Hispanic and white stabbing assaults

1 could have impacted the black non-gang affiliated inmates or the group known as “others.” This  
2 raises an issue because defendant Willey does not characterize or describe the information  
3 obtained.

4           Weekly meetings were held in which the warden, associate warden, Facility  
5 captain, Use of Force coordinator, and any other staffmember with information were present.  
6 The purpose of these meetings were to report back to the warden on the progress staff were  
7 making in restoring the facility to a normal program. During these meetings, staff discussed the  
8 progress of the investigation and the information obtained. DUF # 87.

9           Meetings with staff were also held to disseminate information regarding the  
10 progress of the investigation and unlock procedure. This also gave staff the opportunity to pass  
11 on information they may have gathered from inmates within their housing units that could impact  
12 the unlock process. DUF # 88. Plaintiff avers that no information obtained ever resulted in  
13 disciplinary action against any inmate other than those who took part in the four incidents at issue  
14 who were identified by their participation on the days of the incidents. However, even if true,  
15 this does not dispute the fact that officials were sharing whatever information they had with each  
16 other.

17           Given the nature of the attack on Officer Curry, the long history of violent  
18 outbreaks in Facility B, and the numerous attacks on staff in the preceding year and a half, as  
19 well as other incidents of violence, the lockdown was necessary in order to ensure the safety of  
20 all staff and inmates. DUF # 89. Plaintiff maintains that the responsible inmates had been  
21 punished for the three preceding incidents and that the 9/03/03 incident should not have led to the  
22 extended deprivation of all physical exercise for non-gang affiliated blacks, others, Southern  
23 Hispanics, Mexican nationals. Opp., Ex. C, p. 26. Notwithstanding defendant Willey’s  
24 representation, this fact is disputed.

25           During the first few weeks of the lockdown, inmates could not be released to the  
26 yard because prison officials did not have sufficient information to conclude that it was safe to

1 release large numbers of inmates to the yard. DUF # 90.

2           It has been defendant Willey's experience that releasing inmates, even in small  
3 groups, without the benefit of reliable information, could result in assaults of inmates or staff. If  
4 an inmate has a conflict with another inmate and staff do not have information to indicate that the  
5 conflict is more than a personal issue, it could result in a confrontation not only between the two  
6 inmates but also between any associates of the inmates. Staff have no way of knowing if a  
7 particular group or affiliation were targeting members of their own group for assault. The  
8 number of inmates released is not necessarily relevant to what may occur on a small yard. The  
9 leaders of inmate groups/gangs/affiliations expect and demand retribution for any perceived  
10 wrong. They expect even one inmate of their group to seek retribution, even if out-numbered.  
11 For these reasons, it is imperative that staff conduct investigations and follow up on all leads if  
12 they are going to ensure the safety of staff and inmates. DUF # 91. Plaintiff continues to aver  
13 that each of the four incidents were spontaneous and unrelated such that no amount of  
14 investigation could uncover information that did not exist. However, his assessment is  
15 insufficient to dispute the personal knowledge and experience of defendant Willey.

16           As soon as prison officials were confident that inmates could be released and  
17 returned to normal programming, the facility was unlocked. DUF # 92. Plaintiff's dispute on this  
18 point is more well-taken. Plaintiff contends that the facility was only unlocked when officials  
19 were sure that the deprivation to which they had punitively subjected inmates was such that  
20 future violence would be deterred, rather than on any undefined information they may have  
21 received. Defendants do not provide any specific basis for the confidence that allowed them to  
22 unlock the facility. This fact is in dispute.

23           Following each one of these incidents, the decision was made to place the facility  
24 on lockdown status until an investigation could be completed into the cause of the brutal attacks  
25 on staff members. The decision to lock down the facility was based on concerns for both inmate  
26 and staff safety. DUF # 93. Termination of a lockdown and a return to normal programming

1 could not occur until all the perpetrators of the violence were identified and transferred to other  
2 Level IV institutions, and a determination was made that it was safe for staff and inmates to  
3 return to normal programming. DUF # 94. Historically, there had not been many life threatening  
4 assaults on staff. Due to the nature of the inmate attacks on staff in these four incidents, and the  
5 fact that these were attempts to murder staff, prison officials were forced to take extra  
6 precautions and investigate thoroughly to find out the causes of these attacks. DUF # 95.  
7 Plaintiff attempts to dispute these facts, attested to by defendant Pliler, the former warden of  
8 CSP-Sac (MSJ, Ex. E, Pliler dec.), by arguing that the incidents at issue did not involve attempts  
9 at murder because they were spontaneous or isolated, a wholly spurious point even if it were true  
10 that the attacks did not entail elaborate planning; he further asserts that the individuals involved  
11 were all identified early on. However, without some investigation, officials could not ascertain  
12 this. These facts are not sufficiently disputed by plaintiff to raise a genuine issue.

13           The investigations were time and labor intensive as prison staff were required to  
14 interview all the inmates in the facility, and conduct thorough searches of the cells, common  
15 areas, and yard. Every piece of evidence was examined and all leads were followed. Staff were  
16 also sharing the information uncovered with staff at CDCR headquarters and other institutions in  
17 order to determine if this was a statewide conspiracy to attack staff. Reports had to be  
18 completed. As the investigations were progressing, and inmates were being identified as posing  
19 threats to the security of the prison, those inmates had to be transported to other prisons. This  
20 process also took time. DUF # 96. Plaintiff raises an issue with respect to the declaration that  
21 inmates had to be transported to other prisons, maintaining that no general population B-Facility  
22 inmates had to be transported to other prisons, and defendants do not meet their initial burden by  
23 making a statement even in the form of a declaration without showing any specific record of this  
24 having occurred. As to that point, this fact is disputed.

25           The main priority for prison officials was maintaining the safety and security of  
26 the institution. The goal was to resume normal programming as quickly as possible while ensuring

1 that staff and inmates were safe from further acts of violence. DUF # 97. Additionally, while  
2 staff were investigating the attacks on staff and working toward the goal of unlocking the facility,  
3 there continued to be other incidents of violence among inmates, often involving the use of  
4 inmate manufactured weapons, delaying the prison's goal of resuming a full normal program.  
5 DUF # 98. Staff were faced with a very serious and volatile situation. Staff members were being  
6 attacked and inmates continued their racial and/or gang related wars at every opportunity. The  
7 safety risk was one of the highest defendant Pliler had seen in her long career with CDCR. DUF  
8 # 99. At the onset of the various lockdowns, the inmates could not have outdoor exercise  
9 because of the risk of renewed violence and injuries. Identification and removal of those inmates  
10 involved in both the staff assaults and the racial and gang related wars, before permitting inmates  
11 to congregate was the surest way to reduce the chances for renewed violence against staff and  
12 inmates. DUF # 100. As a result, inmates were not permitted outdoor exercise in the main yard,  
13 the small yards, or in any other area of CSP-Sac, because the risk of violence and injury was too  
14 great. As the investigations progressed, however, and it was determined that it was safe, prison  
15 officials started by allowing small groups of inmates to the yard. DUF # 101. Plaintiff points to  
16 a May 14, 2003, memorandum that permitted normal yard programming for Asians, American  
17 Indians, and Others; concrete yard for Southern Hispanics; and, as of May 15, 2003, concrete  
18 yard for black inmates. Opp., Ex. 24, p. 15. The memorandum notes, inter alia, that there had  
19 been two stabbing assaults nine days earlier involving white inmates. Plaintiff cites this as  
20 evidence that prison officials know that violence involving particular individuals or a particular  
21 race or ethnic group does not require a lockdown of all inmates, even for recent violent acts.  
22 Plaintiff raises an issue of fact as to defendants' representation that an extended lockdown  
23 depriving all inmates of physical exercise is called for when there is violence within identifiable  
24 groups.

25           The main yard in Facility B, which included a running area, and volleyball and  
26 basketball courts was the only feasible place for inmates to go for outdoor exercise and

1 recreation. DUF # 102. This is a point of dispute because, as plaintiff points out, there would be  
2 no point in allowing inmates access to the mini-yards for outdoor physical exercise, as the prison  
3 evidently does, if doing so were not feasible.

4 It is CDCR's policy to program inmates of different racial and ethnic groups  
5 together. Provided that the inmates fomenting violence are identified and removed from the  
6 general population, a single yard program for all inmates created a safer environment for all  
7 involved by reducing perceived differences between the different racial and ethnic groups and the  
8 hostilities that arose from such perceptions. Integrated outdoor exercise also minimized the  
9 changes of releasing an inmate to a hostile yard, or other program facility, e.g., classrooms, work  
10 locations, etc., where he could be attacked. DUF # 103.

11 In DUF # 104, defendants aver that the four separate violent incidents involving  
12 attempts to murder staff, combined with numerous incidents of violence between inmates, all  
13 with use of inmate manufactured weapons, led to officials' conclusion that yard-release was not  
14 safe. In DUF # 105, defendant Piler maintains that she approved of the use of one or more of  
15 the small yards within the main yards of CSP-Sac as areas for inmates to exercise in modified  
16 programs, but that this alternative is not always feasible.

17 In DUF # 106, defendants reiterate that the four incidents required investigation  
18 into the causes and circumstances of the incidents before safely releasing inmates but without  
19 identifying the information which was obtained which ultimately determined release was  
20 appropriate when it was finally allowed. In DUF #107 and #108, defendants maintain that the  
21 unlocking process for a facility following a lockdown is time consuming, that returning to full  
22 normal program quickly is a goal but the priority is staff and inmate safety; and that all CDCR  
23 policies and procedures were followed in deciding to implement the lockdowns at issue herein.

24 Discussion

25 Defendants move for summary judgment as to plaintiff's Eighth Amendment  
26 deprivation of physical exercise claim on grounds that they are entitled to qualified immunity.

1 Accordingly, the court begins the qualified immunity analysis by determining whether defendants  
2 violated plaintiff's constitutional rights.

3           The deprivation of outdoor exercise by prison officials to prisoners can constitute  
4 cruel and unusual punishment in violation of the Eighth Amendment. Spain v. Procunier, 600  
5 F.2d 189 (9th Cir. 1979). "[S]ome form of regular outdoor exercise is extremely important to the  
6 psychological and physical well being of the inmates." Id. at 199. The longterm deprivation of  
7 outdoor exercise is a denial of a basic need in violation of the Eighth Amendment. Allen v.  
8 Sakai, 48 F.3d 1082, 1087-1088 (9th Cir. 1994); see also, Keenan v. Hall, 83 F.3d 1083, 1090  
9 (9th Cir. 1996) (defendants not entitled to summary judgment where plaintiff produced evidence  
10 showing deprivation of outdoor exercise for six-month period in administrative segregation).  
11 Regular outdoor exercise is necessary "unless inclement weather, unusual circumstances, or  
12 disciplinary needs ma[k]e that impossible." Spain, supra, at 199. In Hayward v. Procunier, 629  
13 F.2d 599, 603 (9th Cir. 1980), the Ninth Circuit found that the deprivation of outdoor exercise  
14 and a five-month lockdown in response to a genuine emergency did not violate the Eighth  
15 Amendment; however, plaintiffs therein "were allowed approximately the minimum exercise  
16 mandated in Spain within a month after imposition of the lockdown."<sup>7</sup>

17           The court will separately analyze each of the at-issue lockdowns. Plaintiff was  
18 first on lockdown and denied outdoor exercise from January 4, 2002, to April 3, 2002, i.e., for  
19 approximately three months. The attempted murder of Officer Haggard and the attack on the  
20 other prison staff by a total of eleven inmates, on January 4, 2002, justify the initial decision to  
21 impose the lockdown. It is undisputed that following this incident, searches and interviews of  
22 inmates were conducted. However, the record contains no specific evidence regarding why it  
23 was determined that the emergency which justified the lockdown in the first place no longer  
24

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25           <sup>7</sup> The Ninth Circuit in Spain required at least one hour of outdoor exercise per day, five  
26 days a week, in the absence of, as noted "inclement weather, unusual circumstances, or  
disciplinary needs" rendering it "impossible." Hayward, supra, at 603, citing Spain, supra.



1 existed on April 3, 2002, as opposed to March 3, for example. Rather, the undisputed facts only  
2 generally provide that interviews and searches occurred. Because defendants have not provided  
3 evidence specifically demonstrating that the security emergency existed until April 3, 2002, the  
4 court does not find that they have met their initial burden of demonstrating the absence of a  
5 genuine issue as to this material fact. To hold to the contrary would be to endorse a blank check  
6 with respect to time for which exercise is deprived, i.e., "investigation continues" would sanction  
7 whatever period prison officials in their unfettered discretion would choose.

8 Plaintiff was on lockdown next from May 8, 2002, to July 31, 2002, i.e., for  
9 almost three months. The attack on Officer Tuter and the previous incidents of violence in B-  
10 Facility justified the initial decision to impose the lockdown. Again, it is undisputed that  
11 following the attack on Officer Tuter searches and interviews of inmates were conducted.  
12 However, the record contains no specific evidence regarding why it was determined that the  
13 emergency which justified the lockdown in the first place no longer existed on July 31, 2002,  
14 when African American inmates were released to small concrete yards. Because defendants have  
15 not provided evidence specifically demonstrating that the security emergency existed until July  
16 31, 2002, the court does not find that they have met their initial burden of demonstrating the  
17 absence of a genuine issue as to this material fact.

18 Thereafter, plaintiff was on lockdown from December 28, 2002, to May 15, 2003,  
19 i.e. approximately 4 ½ months.<sup>8</sup> The December 28, 2002, riot clearly justified the initial decision  
20 to impose the lockdown. Again, it is undisputed that following the riot, searches and interviews  
21 of inmates were conducted. However, the record contains no specific evidence regarding why it  
22 was determined that the emergency which justified the lockdown in the first place no longer  
23 existed on May 15, 2003, when African American inmates were allowed to use small concrete  
24

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25 <sup>8</sup> Although plaintiff maintains in his second amended complaint that he was on lockdown  
26 until June 1, 2003, evidence that he himself submits with his opposition indicates that he at least  
had some mini-concrete yard access as of May 15, 2003.

1 yards. In other words, the record contains no specific evidence regarding why African American  
2 inmates were not permitted outdoor exercise sooner. Because defendants have not provided  
3 evidence specifically demonstrating that the security emergency existed until May 15, 2003, the  
4 court does not find that they have met their initial burden of demonstrating the absence of a  
5 genuine issue as to this material fact.

6 Finally, for the two-month period, from September 3, 2003, until November 4,  
7 2003, while the attack on Officer Curry justified the initial lockdown decision, defendants simply  
8 do not provide adequate specific relevant evidence. Again, it is undisputed that following the  
9 attack, searches and interviews of inmates were conducted. However, the record contains no  
10 specific evidence regarding why it was determined that the emergency which justified the  
11 lockdown in the first place no longer existed on November 4, 2003. Because defendants have  
12 not provided evidence specifically demonstrating that the security emergency existed until  
13 November 4, 2003, the court finds that defendants have not met their initial burden of  
14 demonstrating the absence of a genuine issue of material fact.

15 As discussed above, defendants have not demonstrated that they did not violate  
16 plaintiff's constitutional rights. Assuming that defendants violated plaintiff's constitutional  
17 rights by depriving him of outdoor exercise for the periods of time discussed above, the next step  
18 of the qualified immunity analysis is to determine whether plaintiff's right to exercise was clearly  
19 established and whether a reasonable prison official would have understood that to deprive him  
20 of exercise was unconstitutional.

21 At the time of the alleged deprivations, it was clearly established that inmates had  
22 a constitutional right to outdoor exercise. Spain v. Procunier, 600 F.2d 198 (9th Cir. 1979). It  
23 was also clearly established that denying inmates outdoor exercise for the times at issue in this  
24 action was constitutional if a genuine emergency existed. Hayward v. Procunier, 629 F.2d 599  
25 (9th Cir. 1980).

26 \\\

1           The issue is whether a reasonable prison official would have understood that  
2       depriving plaintiff of outdoor exercise during the at-issue times violated his constitutional rights.  
3       As discussed above, the record as to all four lockdowns is not clear as to when the emergency  
4       ceased to exist. While it is clear that investigations had to be conducted, the record contains no  
5       specific evidence regarding how and when it was determined that it was safe to release African  
6       American inmates to the exercise yards. Although plaintiff does not frame an equal protection  
7       claim, the record should also contain evidence regarding why African American inmates were  
8       released to the exercise yards after inmates of other races, at least with respect to the May 8,  
9       2002, and December 28, 2002, and September 3, 2003, lockdowns. Without this information, the  
10      court cannot determine whether a reasonable officer would have known that denying plaintiff  
11      outdoor exercise was unconstitutional. Accordingly, defendants are not entitled summary  
12      judgment based on qualified immunity as to plaintiff's Eighth Amendment claim alleging a  
13      denial of outdoor exercise.

14           Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's claims for  
15      injunctive relief be found mooted and judgment be entered for defendants as to those claims, and  
16      that defendants' March 23, 2006, motion for summary judgment be denied as to plaintiff's claim  
17      for money damages with respect to his allegations of Eighth Amendment violations during the  
18      four lockdown periods involving a deprivation of outdoor exercise.

19           These findings and recommendations are submitted to the United States District  
20      Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
21      days after being served with these findings and recommendations, any party may file written  
22      objections with the court and serve a copy on all parties. Such a document should be captioned  
23      "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
24      shall be served and filed within ten days after service of the objections. The parties are advised

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1 that failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: 3/5/07

/s/ Gregory G. Hollows

4  
5 GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

6 GGH:009  
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